

NOT INCLUDED IN
BOUND VOLUMES

LBH
Warwick, NY

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

BON SECOURS CHARITY
HEALTH SYSTEMS, WARWICK
HEALTHCARE CAMPUS

Employer

and

Case 2-RC-23303

1199 SEIU, UNITED HEALTHCARE
WORKERS EAST

Petitioner

DECISION AND DIRECTION OF SECOND ELECTION

The National Labor Relations Board, by a three-member panel, has considered objections to an election held on October 30, 2008, and the administrative law judge's decision recommending disposition of them. The election was conducted pursuant to a Stipulated Election Agreement. After resolution of the determinative challenges, the revised tally of ballots shows 121 for and 123 against the Petitioner, with one void ballot.

The Board has reviewed the record in light of the exceptions and briefs, has adopted the judge's findings¹ and recommendations,² and finds that the election must be set aside and a new election held.

¹ The judge was sitting as a hearing officer in this representation proceeding. The Employer has excepted to some of the hearing officer's credibility findings. The Board's established policy is not to overrule a hearing officer's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Stretch-Tex Co.*, 118 NLRB 1359, 1361 (1957). We have carefully examined the record and find no basis for reversing the findings.

DIRECTION OF SECOND ELECTION

A second election by secret ballot shall be held among the employees in the unit found appropriate, whenever the Regional Director deems appropriate. The Regional Director shall direct and supervise the election, subject to the Board's Rules and Regulations. Eligible to vote are those employed during the payroll period ending immediately before the date of the Notice of Second Election, including employees who did not work during the period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike that began less than 12 months before the date of the first election and who retained their employee status during the eligibility period and their replacements. *Jeld-Wen of Everett, Inc.*, 285 NLRB 118 (1987). Those in the military services may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the payroll period, striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date,

² In the absence of exceptions, we adopt pro forma the judge's recommendations to overrule Objections 6 and 10, as well as the portion of Objection 5 alleging that Human Resources Director Patrick Clark engaged in unlawful surveillance and the portion of Objection 7 alleging that the Employer disparaged employees for engaging in protected union activities.

In adopting the judge's recommendation to sustain Objection 8, we rely on his finding that the Employer permitted the posting of literature prepared by antiunion employees on the same bulletin boards where it denied employees' requests to post prounion literature.

In setting aside the election, we find it unnecessary to pass on the judge's recommendations to sustain the portions of Objection 5 alleging that Hospital Administrator Mike Deyo created an impression of surveillance during an October 2008 employee meeting and that Nurse Manager Mary Dunkin created an impression of surveillance by posting the "Bullies" flyer. Additionally, Member Hayes finds it unnecessary to pass on the judge's recommendation to sustain the portion of Objection 5 alleging that Dunkin created an impression of surveillance by her presence during the employees' shift change activities. He further finds it unnecessary to pass on the judge's recommendations to sustain Objections 3 and 7.

and employees engaged in an economic strike that began more than 12 months before the date of the first election and who have been permanently replaced. Those eligible shall vote whether they desire to be represented for collective bargaining by 1199 SEIU, United Healthcare Workers East.

To ensure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly, it is directed that an eligibility list containing the full names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within 7 days from the date of the Notice of Second Election. *North Macon Health Care Facility*, 315 NLRB 359 (1994). The Regional Director shall make the list available to all parties to the election. No extension of time to file the list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election if proper objections are filed.

Dated, Washington, D.C., January 28, 2011.

Wilma B. Liebman, Chairman

Craig Becker, Member

Brian E. Hayes, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD